

FILED

DISTRICT COURT OF GUAM

AUG 12 2005 *bel*

IN THE DISTRICT COURT OF GUAM **MARY L.M. MORAN**
TERRITORY OF GUAM **CLERK OF COURT**

* * *

UNITED STATES OF AMERICA,)	COURT OF APPEALS
)	CASE NO.
Plaintiff,)	
)	
vs.)	CASE NO. CR01-00033
)	
ROBERT C. LEONES,)	
)	
Defendant.)	
-----)	

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE CONSUELO B. MARSHALL

Designated District Judge

SENTENCING HEARING**TUESDAY, AUGUST 9, 2005**

Wanda M. Miles
 Official Court Reporter
 District Court of Guam

APPEARANCES:

FOR THE PLAINTIFF:

UNITED STATES ATTORNEY
BY: FREDERICK A. BLACK, Esq.
Assistant United States Attorney
Suite 500, Sirena Plaza
108 Hernan Cortes Avenue
Hagatna, Guam 96910

FOR THE DEFENDANT:

TEKER TORRES & TEKER, P.C.
Attorneys At Law
BY: PHILLIP TORRES, Esq.
130 Aspinall Avenue, Suite 2A
Hagatna, Guam 96910

1 HAGATNA, GUAM; TUESDAY, AUGUST 9, 2005; 4:05 P.M.

2 * * *

3 THE CLERK: Criminal case 01-00033, United
4 States of America versus Robert C. Leones, sentencing.
5 Counsel, please state your appearances.

6 MR. BLACK: Yes, Your Honor, Fred Black for
7 the United States. To my left is Erwin Fejeran, who's
8 a task force agent assigned to ICE, the former
9 Immigration and Customs Enforcement, and he is also the
10 one that has worked primarily with the defendant for
11 the past two years.

12 THE COURT: Good afternoon.

13 MR. TORRES: Good afternoon, Your Honor,
14 Phillip Torres appearing for the defendant, who is
15 present.

16 THE COURT: Good afternoon.

17 The matter before the court this afternoon
18 is sentencing. And I've had a conversation with the
19 probation officer before taking the bench just to make
20 sure that I had all the information that I needed for
21 purposes of imposing the sentence.

22 I've reviewed certain documents and I'll
23 identify those for the record, and if I fail to
24 identify something that has been filed in the case
25 that the court should consider, please bring it to

1 my attention: The presentence report, the final
2 submission date, July 15, 2005; the government's
3 statement adopting findings of the presentence report,
4 this document was filed on May 2nd of 2005; there's an
5 addendum to the presentence report, dated July 15,
6 2005. And the addendum probation indicates that
7 defense counsel has not filed a response to the
8 presentence report as of that date, that is July 15,
9 2005. The United States adopted the presentence
10 report, and that was the document that I just referred
11 to. And the probation officer indicates defendant's
12 financial situation has changed, does not have the
13 ability to pay a fine.

14 The court also has the sentencing
15 recommendation letter dated July 15, 2005; this is the
16 letter where probation calculates the guidelines range
17 and indicates its recommended sentence to the court,
18 the term of supervised release and the terms and
19 conditions of that probation recommends should be
20 imposed.

21 Let me ask, both sides have seen the July 15,
22 2005 recommendation letter?

23 MR. BLACK: Yes, Your Honor.

24 MR. TORRES: Yes, Your Honor.

25 THE COURT: So these conditions, if the court

1 should impose those conditions, that would come as no
2 surprise to the defendant because defense counsel has
3 seen the document and also discussed it with his
4 client; correct?

5 MR. TORRES: Yes, ma'am, that's correct.

6 THE COURT: Then the court has the plea
7 agreement in the case, this is a document that was
8 filed March 30th, 2001; the indictment which was filed
9 March the 28th, of 2001. And the court has reviewed
10 the government's motion for a downward departure
11 pursuant to 5K1.1.

12 And those are the things that I have read and
13 have considered for purposes of sentencing. Is there
14 anything else that was filed with the court that I did
15 not mention that should be reviewed?

16 MR. BLACK: Not for the government, Your
17 Honor.

18 MR. TORRES: No, Your Honor.

19 THE COURT: All right. So at this time the
20 court is prepared to hear from defense counsel.

21 MR. TORRES: Your Honor, we are here for
22 sentencing of Robert Leones, and I have personally
23 known Robert Leones since March 28th of 2001 when I
24 was appointed to represent him. He would like to
25 address the court later.

1 THE COURT: And I will give him that
2 opportunity. I'll hear from defense counsel,
3 government's counsel, and then from defense counsel
4 again in the event the government says anything to
5 which you feel you need to respond, and then I'll hear
6 from the defendant last so that he can respond to
7 anything that may be said by anyone here in the
8 courtroom.

9 MR. TORRES: Thank you, Your Honor.

10 I'd like to point out what I know that I would
11 like to tell the court about the defendant that I would
12 like the court to consider in its final decision on the
13 sentence in this case. When I met him back in March of
14 2001, I felt that I was meeting somebody who was rather
15 confused, somebody who had very long hair; the
16 photograph in the presentence report is the likeness
17 that he had at that time. And I thought he had done
18 a very stupid thing, and I told him that.

19 We talked about what he was being charged
20 with, what he had been indicted on, and his co-
21 defendant, and we discussed his options. We also
22 discussed his life situation at that time. Shortly
23 thereafter we agreed to enter -- he agreed to enter
24 into a plea agreement with the government, to plead
25 guilty and to assist the government. The individual

1 that he was indicted with did not agree to do that,
2 ultimately was sentenced in October of 2001 to ten
3 years and one month, plus conditions.

4 In that plea agreement he agreed to help the
5 government. And I'm sure that there are many people
6 that come before you and have over the years who have
7 agreed to do so, and maybe they do a little, maybe they
8 do a little bit more. This is probably one of the more
9 unusual cases because we've been four years of
10 cooperating with the government and -- before bringing
11 the matter to you for sentencing.

12 I think it's important to understand who he
13 was back in 2001. He was a person who had two
14 children, two girls, one three years old that lived
15 with him and his girlfriend, who is now his wife, and
16 one who was nine years old. And I think he probably
17 looked at drugs as an easy way to make a few bucks and
18 help take care of some bills, and I think he also -- in
19 fact, I know that he regrets those decisions. And,
20 ironically, I think the arrest in this situation has
21 led to a lot of positive change in his life.

22 When we entered in the plea agreement and
23 were looking -- I realized we were looking at a
24 ten-year sentence under the guidelines as they existed
25 at that time, I told the Assistant U. S. Attorney, who

1 was Mark Kondas at the time, that what we wanted to do
2 was do all we could so that one day when it came time
3 for sentencing, that he would not be sentenced to time
4 in jail, perhaps just time served. The time served
5 that he has is 16 days in this case. That's still our
6 hope.

7 And we have done, and Mr. Leones has done
8 everything the government has asked him to. He, as
9 part of his pretrial release conditions, had certain
10 reporting requirements that were ongoing and
11 continuous, never violated those; he had drug testing
12 requirements where he was tested countless times and
13 never violated those. He was asked to put himself in
14 dangerous situations; he wore a wire more than 20
15 times. He at one time had a gun pointed at him. He
16 basically did all that he was asked, all that he could
17 do in this case. Because of his involvement with the
18 government, it has led to eight arrests, as noted in
19 the downward departure motion of the government. It
20 has resulted in a seizure of almost 600 grams of ice.

21 The motivation earlier on was his two
22 daughters, I think, and his relationship with his
23 girlfriend at the time. And he wanted to be able to
24 be a part of their lives and to see them grow through
25 the various stages that they were going to go through,

1 and I think he understood that if he didn't do all he
2 could, he wasn't going to see them go through their
3 graduation, that he would miss out of many of those
4 precious moments that you can never recapture in a
5 child's life.

6 Mr. Leones currently works at the Yigo mayor's
7 office; it used to be a part-time position but it's now
8 a full time position. As part of that, as recreation
9 coordinator, as part of his job duties, he was a coach
10 in what we have on Guam called the Shell Oil, Shell
11 Drug Free Basketball Program. I didn't realize that
12 until today. But one of the things they do, and they
13 have almost 200 kids in this program, children in grade
14 school, and children in middle school, and they counsel
15 them on how bad drugs are, they do it at practice, they
16 do it before games. He's somebody with a unique
17 ability to know what he's talking about, although I'm
18 not certain that's communicated to them. But he is a
19 part of that program. If he was to be sentenced to
20 time served with supervised release, he would not have
21 to lose his job at the Yigo mayor's office.

22 I'm sure that everybody comes to you, most
23 people come to you and are asking for the most lenient
24 of sentences, but in this case, I believe that time
25 served and supervised release is warranted under what

1 he has done. And I think that the government, if they
2 were to be asked directly, would they be upset if their
3 recommendation of 18 months wasn't followed and he did
4 receive time served, I don't think they would have a
5 problem with that.

6 Mr. Leones made a big mistake; he's done all
7 he could to correct it. He agreed to cooperate, he
8 meant it at the time, and did everything that was asked
9 of him. I hope the court takes that in consideration.
10 Thank you.

11 THE COURT: A couple of questions by the
12 court. The age of the daughters?

13 MR. TORRES: They are currently --

14 THE COURT: Present age.

15 MR. TORRES: -- 13 and 9, Your Honor -- 13 and
16 7, I'm sorry. 13 and 7.

17 THE COURT: And they reside with their mother?

18 MR. TORRES: The 7-year-old resides with the
19 defendant and his wife, and the older girl resides with
20 her mom. But he does support her, by the way.

21 THE COURT: And so the two girls would be
22 taken care either by the biological mother or by the
23 wife of the defendant if the defendant were not there
24 to care of the girls?

25 MR. TORRES: They both have biological

1 mothers.

2 THE COURT: Okay. Describe what you believe
3 to be the defendant's role in the offense, and how
4 many other defendants or how many other persons were
5 involved in the particular transaction that's the
6 subject of the indictment for which we are here to
7 sentence today.

8 MR. TORRES: As I understand it, he was
9 somebody who used to use drugs in the early, mid-90's,
10 it was the drug ice, and then stopped, and then met
11 somebody in 2001 who was a considerable player in the
12 importation and distribution of drugs; he was
13 approached and asked if he would help and he agreed
14 that he could sell them. And on one occasion these
15 drugs arrived on island, were seized by the government,
16 they used the drug Clue to mark them, he was at that
17 residence where they were delivered, and when they were
18 delivered the government came and arrested everybody
19 who was in the house and he was one of the individuals
20 in the house.

21 THE COURT: He was asked if he would help, he
22 indicated yes. What was his motivation for helping?

23 MR. TORRES: He was going to be somebody who
24 was going to help distribute them locally. They were
25 going to sell it to him for \$250 and he was going to

1 try and sell it for \$300. His motivation was trying
2 to make \$50 a gram.

3 THE COURT: And he was to sell it in this
4 community?

5 MR. TORRES: In this community, yes.

6 THE COURT: And at this time he had
7 discontinued the use of drugs?

8 MR. TORRES: He had discontinued the use of
9 drugs until shortly before that time. I think it's
10 important that ever since, in these four years and all
11 the tests he has taken, he's never once tested positive
12 or been in violation of his pretrial release
13 conditions. But yes, to answer your question, the
14 answer is yes.

15 THE COURT: So what he agreed to do was to
16 help distribute the drugs in this community, but it
17 didn't get that far, because the drugs were seized
18 prior to him getting it in his hands; is that correct?

19 MR. TORRES: That's correct.

20 THE COURT: And how long had he been using
21 drugs? And if you think he can better answer this
22 question than you, then I'll certainly let him answer
23 it. How long have you been using drugs again at the
24 time that this event occurred?

25 MR. TORRES: It's my understanding it had been

1 a few months, and I think that was consistent with
2 documents we executed back in his initial release.

3 THE COURT: And what happened that caused him
4 to start using drugs again, if you're knowledgeable?
5 Was there some event in his life, or what caused him to
6 start using again?

7 MR. TORRES: Didn't have a job.

8 THE COURT: And how many other defendants, if
9 there were other defendants, were indicted as a result
10 of this transaction, to your knowledge?

11 MR. TORRES: I think there might have been
12 four people in that house at the time, but he was
13 indicted with only one other person.

14 THE COURT: Okay. And I guess you probably
15 feel the government can best describe their respective
16 roles.

17 MR. TORRES: Yes, I think so.

18 THE COURT: Okay. All right, I have no
19 further questions.

20 MR. TORRES: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Government's counsel?

23 MR. BLACK: Yes, Your Honor. The defendant's
24 role in this case was kind of as an assistant to a
25 major distributor of methamphetamine and a major

1 importer, the co-defendant by the name of Monton, who
2 was convicted, pled guilty partly as a result of this
3 defendant's cooperation.

4 The government, as you can see in our motion
5 for downward departure, is recommending no more than
6 18 months. We'd leave it to the sound discretion of
7 the court, as always, what particular sentence should
8 be imposed.

9 The government is somewhat in a difficult
10 position, because we get very close to these defendants
11 having worked with them over a period of years, the
12 agent is very close to them. The head of ICE, or RAC
13 of ICE is in the courtroom today, Rob Robertson, behind
14 me; he said good things about this particular
15 defendant. I think he's here for the case that follows
16 this.

17 Certainly, Your Honor, ice is probably the
18 most destructive force that exists on Guam; robberies
19 and burglaries that happen as a result of ice use just
20 is devastating to this community. And the ice is
21 coming both from the Philippines as well as Los
22 Angeles. It goes to and from via the Hawaiian Islands
23 and also from the Orient, and about 50 percent comes
24 from both directions, and it sells in Guam for anywhere
25 from 300 to a thousand dollars. In this case the going

1 rate was approximately \$300 at the time.

2 The defendant's role was in a way almost like
3 a mule in a drug world. The co-defendant, the primary
4 organizer, used this defendant to actually pick it up
5 when it was mailed in at Federal Express, and that
6 often fits the mode. At the time this defendant was
7 25 years of age, and he was a young man and had a prior
8 addiction, and perhaps was currently addicted at the
9 time.

10 What we always tell the defendants at the time
11 is that we want their full cooperation, and we want it
12 as long as it takes; and as long as they're producing
13 results for us, we often continue the case. In this
14 case, the entire case was sealed so that he would have
15 the benefit of being able to work on a small island
16 where it wasn't announced in the headlines of the
17 newspaper, and we found it to be a very effective
18 technique.

19 This defendant is perhaps one of the most
20 effective undercover type people that we've had for
21 years. He produced a total of five different seizures
22 that added up to about 557 grams of methamphetamine
23 that would have come to Guam and been on the streets
24 but for his activity. Four drug importers and three
25 local drug dealers have been convicted as a result of

1 his cooperation. He had over 71 telephone recorded
2 calls. As defense attorney alluded to, made numerous
3 undercover meetings in which he wore a wire. He did an
4 excellent job for the government. And throughout the
5 entire time period he was tested for various urine
6 testing and tested -- never tested positive the whole
7 time. He's been employed, he's married, apparently he
8 is a good father.

9 The government is recommending no more than
10 18 months just because we know it's quite a serious
11 offense that he got involved in to begin with. We
12 leave it to the court's discretion, of course, as the
13 court's got the power at this time to impose the
14 appropriate sentence. Thank you.

15 THE COURT: Defense counsel said the
16 government won't be upset if the court were to give
17 this defendant credit for time served. And as I
18 understand it, that time is 16 days. And I would just
19 ask, is that a correct description of the government's
20 position?

21 MR. BLACK: I guess our official
22 recommendation is no more than 18 months. If whatever
23 the court decided to give him, whether it was the 18
24 months, a lesser term all the way down, nobody is going
25 to be upset in this case just because of the tremendous

1 value of the defendant's cooperation.

2 And oftentimes we think in terms of
3 deterrence, deterring other people, but there's another
4 message sent as well; when a person really does
5 everything he's supposed to do, wears a wire, works
6 undercover and helps stop some of the sicknesses that's
7 in this community, it's not a bad message either that
8 they get a much better treatment, and that message,
9 whether it's carried in the media or whether it simply
10 is carried via the small defense bar that we have, I
11 think the defense lawyers realize that if somebody
12 cooperates in a significant way, and very few can do
13 that because the methamphetamine is so addicting that
14 most of the people that got involved get back into it,
15 and most people that say they're going to cooperate
16 simply don't. So this defendant, there was unreserved
17 praise for this defendant by the head of the office, as
18 well as the task force guy that worked with him.

19 THE COURT: And in deciding how many levels of
20 departure which at least gives some guidance as to what
21 the sentence should be, and the recommendation of the
22 government, is that recommendation made after
23 consulting the two individuals who you've identified
24 who are present in the courtroom today, who have worked
25 with the defendant?

1 MR. BLACK: Yes. They were the ones that came
2 up with the language "no more than 18 months" to
3 recommend to Your Honor. And then I consulted with the
4 First Assistant U. S. Attorney in my office, and he
5 grudgingly said "no more than 18 months". But we've
6 phrased it in that term just to give the court whatever
7 latitude the court felt was appropriate. But certainly
8 these defendants -- or these investigators that are
9 here with me are the ones that made that
10 recommendation.

11 THE COURT: And is it based on policy of the
12 office or somebody's policy that the government has
13 recommended a departure to a level that permits the
14 government to recommend to the court no more than 18
15 months as opposed to just simply recommending credit
16 for time served if that's really the assessment that
17 you feel should be given to the case?

18 MR. BLACK: I don't know if it's a specific
19 policy. Every case in our office has to be run by the
20 First Assistant; he comes from Florida where they don't
21 depart as many levels. As a prosecutor, I've always
22 just recommended a sentence based on what the agents
23 tell me because they're the ones that work closest with
24 the defendant. Certainly there is the benefit of the
25 deterrent; some people surprise us, years later they

1 get back into it. It's a terribly addicting drug. So
2 there's a value of deterrence for the individual as
3 well as the community, if there is a deterrence.

4 But there's no question that this defendant
5 cooperated in an outstanding manner, and that has led
6 a very good life for the past four years. And some of
7 that to the extent that they've had to live to a degree
8 of fear or a degree of uncertainty for four years,
9 being asked to wear a wire, some of that is actually in
10 a sense almost serving time, because they have to live
11 for a period of time in a world that isn't perfectly
12 safe for them.

13 THE COURT: I indicated that I have read the
14 government's motion, but I did not see the memo that
15 probably accompanied this motion, so maybe government's
16 counsel can advise the court. I have the file here on
17 the bench, and I've been looking through it, and of
18 course things are placed in the file I guess based on
19 dates when things are filed, but I have not found in
20 the file the actual memorandum where the government may
21 discuss in more detail the defendant's cooperation.

22 MR. BLACK: And the court -- my copy is
23 actually very short. Primarily he assisted in the
24 conviction of the co-defendant. As a result of his
25 cooperation, agreement to testify in the case, the

1 co-defendant received the lengthy sentence that he did.
2 And then on the second page really talks in terms of
3 the number of recorded calls as well as the number of
4 seizures, the 557 grams, approximately five different
5 seizures, four drug importers, three local drug
6 dealers, and numerous undercover meetings and things of
7 that sort. So it's relatively short, but that's a copy
8 of it, Your Honor.

9 THE COURT: And you indicate here, and I think
10 you indicated orally that there were four drug
11 importers who were arrested and convicted as a result
12 of cooperation given?

13 MR. BLACK: That's true, Your Honor.

14 THE COURT: And three of those are local Guam
15 drug distributors?

16 MR. BLACK: That's true, Your Honor.

17 THE COURT: Defendant did not testify in any
18 of the cases, and I assume that's because none of them
19 went to trial so his testimony wasn't needed?

20 MR. BLACK: I believe that's the case. I
21 don't have all the specifics that were between two
22 different agencies; DEA did some of these cases and
23 Customs did the others. The Customs people are here
24 and could answer any of those questions. But I believe
25 that since the undercover meetings were recorded and

1 things of that nature, the defendants all pled guilty.
2 I don't think he was required to testify.

3 (Turning to agent.) Is that true?

4 He didn't have to testify. He was prepared to
5 testify, but he did not have to testify.

6 THE COURT: That was going to be my next
7 question. It's your belief that if it had been
8 necessary for him to testify, he would have testified?

9 MR. BLACK: That's true, Your Honor. And it's
10 very likely that the people that he did controlled buys
11 with and things of that sort knew that he was
12 cooperating at some point in time. That's part of the
13 reason they pled guilty.

14 THE COURT: Now, had it been necessary for the
15 defendant to testify, that would have been one other
16 factor that probably the government agents would have
17 taken into consideration in making a recommendation to
18 the court. Is it your belief the recommendation would
19 have been different, in other words, you would have
20 requested a departure level even greater had the
21 defendant actually testified, or is it your belief that
22 whether he testified or not, since he was willing to do
23 so, the recommendation in terms of the levels of
24 departure would have probably been the same?

25 MR. BLACK: It would be the latter, Your

1 Honor. We give him the full benefit of being prepared
2 to cooperate, including testifying which was his
3 commitment to us. He wore the recordings -- he did the
4 recordings, he wore the wires. We have no reason to
5 believe he would not have testified. And whether he
6 ultimately had to testify or not, we assume that he
7 would have. And so, most defendants do end up pleading
8 guilty but we like to give them the benefit of whether
9 he had to testify or not.

10 THE COURT: And is it your belief that he
11 would have testified in each of these cases that you've
12 described, which in my count, if I'm -- well, maybe I
13 don't know how to count it -- but if each of these
14 cases had gone to trial, he had been called to testify,
15 the number of cases in which he testified, would it be
16 five?

17 MR. BLACK: I think the numbers of cases, some
18 of the defendants were together, but there were seven
19 total defendants; whether they would have been severed
20 at times of trials or not, I don't know, but he would
21 have been prepared to testify with regard to seven
22 individuals.

23 THE COURT: And that includes the one
24 defendant who was given the mandatory minimum of 120
25 months, the one who's described as the co-defendant?

1 MR. BLACK: That's true, Your Honor.

2 THE COURT: Okay. Could you -- you may not
3 know, but just trying to know a little bit more about
4 those defendants who pled, and the court is curious
5 about their criminal history and whether they were
6 previously involved in drug activity and how the
7 government would have classified them. Do you see them
8 as big drug dealers, or were they were mules, or how
9 would you classify them?

10 MR. BLACK: Perhaps the agent could answer.

11 THE COURT: All right, if you'll step forward
12 and state your name for the record, and then if you
13 could just answer the question.

14 AGENT ROBERTSON: Your Honor, my name is
15 Robert Robertson, I'm the resident agent in charge for
16 Immigration and Customs Enforcement here on Guam.

17 I can't speak to the DEA cases, but I can
18 speak to the co-defendant in the original case
19 resulting in the arrest of Robert Leones, a gentleman
20 named Arnold Monton, who law enforcement on the island
21 had been after for a very long time, whose name
22 appeared repeatedly in significant drugs
23 investigations. So we were very fortunate in that
24 particular case that the threat of Robert Leones'
25 testimony resulted in his plea and his conviction.

1 THE COURT: So how would you describe him if
2 you had to describe him in terms of drug dealing, heavy
3 drug dealer or significant or --

4 AGENT ROBERTSON: Certainly a significant, a
5 major player here on Guam at the time, and for a long
6 time.

7 THE COURT: And had he been previously
8 convicted and served a sentence, or do you know?

9 AGENT ROBERTSON: I don't recall Arnold
10 Monton's criminal history.

11 THE COURT: And so that was the named
12 co-defendant in the case, so he's the only one that
13 you're able to address; correct?

14 AGENT ROBERTSON: Yes.

15 THE COURT: The other persons who are
16 mentioned in the government's sentencing memorandum,
17 your agency wasn't involved with those?

18 AGENT ROBERTSON: No, Your Honor.

19 THE COURT: The DEA was the agency involved?

20 AGENT ROBERTSON: Yes, Your Honor.

21 Your Honor, if I could just add one thing?

22 THE COURT: Sure.

23 AGENT ROBERTSON: I wrestled with my
24 recommendation on Robert Leones, keeping in mind my
25 sense of obligation of fairness to other defendants

1 that we encounter, consequently the phrasing of my
2 memo to the Assistant U. S. Attorney. That was my
3 professional recommendation. My personal hope is that
4 Robert Leones walks out of here with probation.

5 THE COURT: Even though the credit -- I mean
6 the time that he served was only 16 days?

7 AGENT ROBERTSON: Yes, Your Honor.

8 THE COURT: Maybe you could just explain for
9 this record why you think that's adequate, an adequate
10 sentence for this defendant. And the government I
11 think alluded to it that maybe one sees the cooperation
12 of this defendant as being as difficult for him
13 personally as if he had actually been in custody at the
14 time just awaiting trial and sentence, but I'll let you
15 express it.

16 AGENT ROBERTSON: Certainly it's difficult on
17 cooperating defendants who, for the length of time
18 involved in this case, several years, to be out there
19 on the street knowing that at any time the cooperation
20 or the information that they provide to law enforcement
21 could necessarily leak back into the community but
22 could cause the community or the criminal community on
23 the island to realize that, hey, there's no place other
24 than from this individual that that information could
25 have come from resulting in my arrest. So he's

1 certainly had to live with that.

2 And in the process of doing that, he did a
3 180-degree turn in the way he handled his life, and
4 certainly everybody in my office recognizes that. We
5 all personally like Robert Leones, we wanted to find
6 a way to get him the opportunity to cooperate at such
7 a level that we had no problem coming in here and
8 recommending probation. It was just the nature of his
9 position in society and kind of being on the fringe of
10 the criminal community and not in the heart of it that
11 kind of prevented that opportunity. But had it been
12 presented to him, I have no doubt that he would have
13 jumped at the chance.

14 THE COURT: Thank you.

15 AGENT ROBERTSON: You're welcome.

16 THE COURT: Anything else that either the
17 government's counsel or the agent wishes to place on
18 the record for the court's consideration before the
19 court imposes sentence?

20 MR. BLACK: Just briefly, to add to what the
21 agent said. At the time I was the United States
22 Attorney, I had been the United States Attorney for
23 about 12 years. At that time the standard advice that
24 I gave when this case was busted, or all the drug cases
25 were busted, that we would sit down with the defendant

1 and the defense attorney and say, the people you have
2 to convince are these agents, because at the time of
3 sentencing we will proudly recommend to the judge
4 whatever they recommend to us. So, that just kind of
5 is to underscore the importance that we, the value we
6 put in the agent's feeling about a case.

7 THE COURT: Thank you.

8 Defense counsel have anything further to
9 place on the record before the court hears from the
10 defendant?

11 MR. TORRES: Your Honor, I think the court
12 has asked some great questions here, and has been
13 enlightened as to what the official position of the
14 government is, and what their desires may be. And
15 unless you have more questions of me, I have nothing
16 to add.

17 THE COURT: I have no additional questions.

18 The defendant may step to the lectern. And
19 you do have a right to be heard, sir, before the court
20 imposes sentence, so I'll hear from you at this time.

21 THE DEFENDANT: First of all, I would like to
22 say I'm very sorry. And I know I made a big mistake.

23 THE COURT: Sir, if you need a little time
24 before you address the court, I'll give you that
25 additional time. The court reporter is making a record

1 of these proceedings, so we do need you to speak
2 clearly enough that she's able to take down what you're
3 saying. So if you need a few moments to compose
4 yourself before you address the court, I'll give you
5 that time.

6 (Pause.)

7 THE COURT: What is your present age, sir?

8 THE DEFENDANT: I'm 29.

9 THE COURT: And at the time that this offense
10 occurred I believe you were 25?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. What I'd like to have you
13 do is, in addition to any statement that you may wish
14 to make, and if defense counsel thinks it's
15 appropriate, is to tell me about your drug use history,
16 when you started using drugs, about that time in your
17 life that you stopped, whether you did that as a result
18 of some rehabilitation program or you just did that on
19 your own, and why it is that you started using again,
20 and then more importantly, why would you agree to sell
21 or distribute drugs in this community. You have young
22 children of your own, and clearly we all feel very
23 strongly that they not become addicted or even
24 experiment with drugs. So how is it that you would
25 agree to distribute such a dangerous drug as ice in the

1 community in which you live, where your children are
2 growing up, and you probably have other relatives who
3 are young as well. So tell me a little bit about your
4 own drug history, how you started using drugs, what
5 drug, and how it is that you were able to stop.

6 THE DEFENDANT: I started using drugs in the
7 year '93, between '93 and 1994.

8 THE COURT: And how old were you at the time?

9 THE DEFENDANT: 18, 19. And I used it till
10 about 1996.

11 THE COURT: So for about two or three years?

12 THE DEFENDANT: Yeah.

13 THE COURT: And how did you happen to start
14 using drugs, why, and tell me about that.

15 THE DEFENDANT: I started using drugs because
16 the people I hung around with was -- they were using
17 drugs at that time. And --

18 THE COURT: And what was the drug that you
19 started using?

20 THE DEFENDANT: Ice.

21 THE COURT: So you started with ice?

22 THE DEFENDANT: Yes.

23 THE COURT: You used drugs then for two to
24 three years?

25 THE DEFENDANT: Yes.

1 THE COURT: And how serious was your habit at
2 that time, or how would you describe it?

3 THE DEFENDANT: At that time I think I wasn't
4 really addicted to it, I'd use it like maybe three
5 times a month, two to three times a month. I've seen
6 people that use, I mean, their dose is way, way bigger
7 than my own, that's why I say that I think I wasn't
8 addicted to it.

9 THE COURT: And did you become addicted at any
10 time?

11 THE DEFENDANT: Uhm, no. No, Your Honor.

12 THE COURT: And so at some point you just
13 stopped using the drug; how did that happen?

14 THE DEFENDANT: I stopped using the drug
15 because I wanted to change. I had a three-year-old
16 daughter and that wasn't even born and I had no job,
17 that I needed to support, so I thought that was the way
18 to make, you know, fast money. I know it's the wrong
19 way.

20 THE COURT: And what you're addressing now is
21 why you decided to aid in the distribution of drugs in
22 the community. At that time you had a three-year-old
23 daughter, you weren't working you needed money to
24 support the daughter, and so you agreed that you would
25 distribute drugs in this community and you would be

1 compensated for that?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. But how is it that you --
4 what happened in your life that caused you to stop
5 using drugs? Is that what you're telling me now, you
6 stopped using because you had a three-year-old and you
7 needed to work?

8 THE DEFENDANT: I just -- I wanted to just
9 completely stop.

10 THE COURT: And you were able to do that on
11 your own without any assistance?

12 THE DEFENDANT: Yes. I quit on my own for
13 about, a little more than two years, three years, I
14 quit on my own.

15 THE COURT: So for two or three years you
16 stopped using. And did you ever start using again?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: So you just agreed to distribute
19 the drugs because you needed funds?

20 THE DEFENDANT: Yes.

21 THE COURT: Anything else that you can tell me
22 about the why or the how of your drug history? Or have
23 you told me everything that you can tell me about that?

24 THE DEFENDANT: Yes. I don't have a big drug
25 history, or --

1 THE COURT: Have you done anything in this
2 community to assist the community generally, or young
3 people, to help the people understand why they should
4 not resort to the use of drugs? Something other than
5 the cooperation that you've provided to the government.

6 THE DEFENDANT: Your Honor, that, we had that
7 Shell Drug Free Basketball League for the kids, the
8 ages range from 6 years of age all the way up to 14.
9 And we have about 200 or maybe a little more than 200
10 kids for the Yigo, the district of Yigo, and I was one
11 of the coaches and advisors for our club. So before
12 every practice we give 30 minutes, we talk to the kids
13 for about 30 minutes about, you know, how the drugs can
14 ruin your life and all that, alcohol, you know, it's
15 not good to smoke, everything that's bad.

16 THE COURT: And how long have you been
17 involved with the group?

18 THE DEFENDANT: The GYBA just started I
19 believe just this year, this is their first one, and
20 it's going to keep continuing on.

21 THE COURT: And is it your intent to continue
22 being involved with them?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Before you joined this
25 organization, or before you were helping the

1 organization before it actually commenced, were you
2 doing anything else in the community in the form of
3 counseling or working with youth or any other group of
4 people that you may have provided some counseling re
5 the use of drugs?

6 THE DEFENDANT: Well, the Yigo summer camp,
7 the Yigo youth summer camp.

8 THE COURT: And what is it that you did there?

9 THE DEFENDANT: Same thing what we did with
10 the basketball kids, talk about drugs and how it can
11 affect your life, how it can ruin your life.

12 THE COURT: And how long were you involved
13 with this group?

14 THE DEFENDANT: That was from, I believe June
15 3 to the end of June -- something -- I think the summer
16 camp ended on the 27th or 28th.

17 THE COURT: So June of what year?

18 THE DEFENDANT: Of 2005.

19 THE COURT: Any other involvement with youth
20 groups or other groups in the community?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. Anything else that you
23 wish to place on the record, sir?

24 THE DEFENDANT: Uh, I hope I get another
25 chance so that I could see my children grow. And if

1 ever the government needs me, I'm still here.

2 And I would like to say again that I'm really
3 sorry. I want to apologize to the government, and to
4 my family. And that's all, Your Honor.

5 THE COURT: Sir, maybe you can describe this.
6 What has your life been like these last few years that
7 you've been cooperating or assisting the government?

8 THE DEFENDANT: It's been very scared. I
9 feared for my family.

10 THE COURT: Thank you, sir.

11 Anything else to be placed on the record by
12 anyone else before the court sentences?

13 MR. TORRES: Nothing for the defendant, Your
14 Honor.

15 THE COURT: Government?

16 MR. BLACK: Not for the government, Your
17 Honor.

18 THE COURT: Probation is seated in the
19 courtroom, and as I indicated, I did speak with the
20 officer before the court took the bench. Probation has
21 made a recommendation to the court. I don't know if
22 probation's recommendation would be the same or if
23 there's something that you'd like to place on the
24 record at this time.

25 PROBATION OFFICER GUILLIOTT: Probation has no

1 objections to the government's position on sentencing
2 in this matter, Your Honor.

3 THE COURT: Thank you.

4 All right. If the defendant and counsel will
5 step forward.

6 No legal cause why sentence should not be
7 imposed?

8 MR. TORRES: No, Your Honor.

9 THE COURT: And defendant does waive formal
10 arraignment for sentencing?

11 MR. TORRES: Yes, Your Honor.

12 THE COURT: As I indicated, the court has
13 read all of the documents, including the government's
14 sentencing memoranda, and the court receives them all
15 into evidence for purposes of these proceedings.

16 The presentence report prepared by the
17 probation officer considers the guidelines and makes
18 reference to them in calculating the sentence range,
19 or at least the guidelines range pursuant to the
20 guidelines. The court is aware, of course, based on
21 the Booker decision, that the guidelines are only
22 advisory for the court, they're not mandatory, so the
23 court may impose the sentence that the court deems
24 appropriate, considering the guidelines and the advice
25 given by the guidelines. So the court has considered

1 the guidelines and the advice that they provide.

2 In calculating a sentence pursuant to the
3 guidelines, the court would find that the base offense
4 level is 36. A two-point increase because of the
5 importation of the methamphetamine, two-point reduction
6 for safety valve, and that provides an adjusted offense
7 level of 36. Three-point deduction for acceptance of
8 responsibility; total offense level is 33.

9 The defendant falls into a Criminal History
10 Category of I. And the guidelines range under the
11 guidelines would be -- one moment.

12 MR. BLACK: 135 to 168 months, Your Honor.

13 THE COURT: Yes, 135 to 168 months, thank you.

14 This case, if not for the safety valve and the
15 government's recommendation, would carry a mandatory
16 minimum of ten years, and has been addressed here.
17 One of the defendants, the co-defendant received that
18 mandatory minimum sentence.

19 So the court has considered all those factors,
20 as well as the factors, the other factors that are in
21 the sentencing statute that suggests it's appropriate
22 for the court to consider the nature of the offense,
23 whether or not the defendant is in need of educational
24 programs, health programs, et cetera, that could be
25 provided to him if he were given a custody sentence;

1 disparity in sentencing as we look at others who are
2 similarly situated, and the sentence that they
3 received; and all of the other factors that are
4 appropriate for the court to consider. I think they're
5 all addressed either in this presentence report or in
6 discussions that have been provided here this
7 afternoon.

8 The court has heard from, directly from one
9 of the agents involved in the case; the government has
10 indicated that it's consulted with those agents in
11 making its recommendation. And the recommendation that
12 has been made is that the court impose a sentence for
13 no more than 18 months. The court infers from what's
14 been said here that those who have been directly
15 involved with the defendant do not disagree that an
16 appropriate sentence in this case would be credit for
17 time served.

18 Now, the amount of time served in this case is
19 16 days. So, to give a sentence of 16 days for such a
20 serious offense is, the court believes, quite unusual.
21 But maybe it's because those who have been directly
22 involved and know more about the case find it to be
23 quite an unusual case. For that reason, the court is
24 going to sentence this defendant to credit for time
25 served.

Wanda M. Miles
Official Court Reporter

1 I will be preparing a statement of reasons,
2 but in this case I'm also going to order that the
3 sentencing transcript or the sentencing proceeding be
4 transcribed and that a copy of that transcript be
5 forwarded to the Sentencing Commission along with the
6 statement of reasons and the other documents that
7 probation has the responsibility of forwarding to the
8 Sentencing Commission.

9 I'm going to try to articulate here the
10 reasons, but I think that they are best addressed in
11 those statements made by government's counsel as well
12 as the agent who addressed the court, and the statement
13 made by the defendant.

14 But the reasons or justification for the
15 sentence, in addition to the nature of the offense,
16 the court considers that this is an offense that
17 occurred approximately four years ago, that the
18 defendant has been cooperating with the government
19 for that amount of time, for approximately four years.
20 The government has indicated on the record the amount
21 of cooperation defendant has given.

22 The court would just articulate the
23 cooperation resulted in apparently the conviction
24 of the co-defendant who has been described as a
25 significant major drug player here on Guam.

1 Defendant also provided information that
2 resulted in the conviction of four drug importers and
3 three local Guam drug distributors, so 7 persons who
4 defendant was responsible for their conviction.

5 The court has also considered the defendant's
6 description of what life has been like during these
7 four years; he's described it as being scary, fear for
8 himself, fear for his family. And those are factors
9 that the court takes in consideration as well.

10 One of the agents addressed the fact, or the
11 government's counsel, that it must be difficult to be
12 on the streets when you're cooperating in a small
13 community, others may be aware that you're cooperating,
14 and therefore, to some extent, it is -- your life is
15 in danger and the activity in which you're engaging is
16 dangerous activity.

17 The government made a statement that the court
18 thinks is significant, that obviously in sentencing as
19 we look at the disparity, we do look at the deterrence.
20 One of the things that we hope to accomplish by
21 sentencing, one, especially when we sentence to
22 custody, is that the message in the community will be
23 that if one engages in activity of this type, they are
24 likely to receive a long sentence, and we are hoping
25 that that means the community gets the message and it

1 will act as a deterrence. Government also commented,
2 however, when one helps and assists with others being
3 arrested and convicted, that they do it of course to
4 some extent hoping that it will benefit them; and a
5 part of that message should be that when one assists to
6 the extent that this defendant has assisted, that one
7 should receive the benefit of what they were hoping to
8 accomplish. For all those reasons, the court will
9 impose a probationary sentence.

10 Since the court is going to impose a
11 probationary sentence, I think it's probation's
12 recommendation that the period of probation be for
13 five years; am I correct?

14 PROBATION OFFICER GUILLIOTT: Yes, Your Honor,
15 and it would be a term of supervised release, not
16 probation.

17 THE COURT: That's right, because the court
18 does sentence the defendant to the custody of the
19 Bureau of Prisons for a period of 16 days.

20 PROBATION OFFICER GUILLIOTT: Yes, Your Honor.

21 THE COURT: He gets credit for the 16 days
22 that he's served, if that calculation is correct; then
23 upon release, defendant will be placed on supervised
24 release for a period of five years, under the following
25 terms and conditions.

1 PROBATION OFFICER GUILLIOTT: Yes, Your Honor.

2 THE COURT: One, the defendant is not to
3 commit another federal, state or local offense; two,
4 the defendant shall comply with the standard conditions
5 of supervised release set forth by the statute; three,
6 the defendant shall not possess a firearm or other
7 dangerous weapon.

8 Four, the defendant shall not use or possess
9 illegal controlled substances; five, the defendant
10 shall submit to the collection of a DNA sample at the
11 direction of probation; six, the defendant shall
12 refrain from the use of any and all narcotic beverages;
13 seven, the defendant shall submit to one drug test
14 within 15 days of release from custody, and two drug
15 tests thereafter.

16 And eight, the defendant shall participate
17 in a program approved by probation for assessment and
18 treatment of narcotic addiction or drug or alcohol
19 dependency, which will include testing for the
20 detection of substance use or abuse.

21 It's further recommended the defendant make
22 co-payment for treatment at a rate to be determined by
23 the U. S. Probation office.

24 Pursuant to 5E1.2(f) of the guidelines, all
25 fines are waived; the court finds defendant does not

1 have the ability to pay a fine. The court does order,
2 however, that the defendant pay a special assessment of
3 a hundred dollars; that is to be paid immediately after
4 sentencing.

5 And the court has set forth a justification
6 for the sentence, and therefore, all of the statements
7 previously made on this record are the reasons as to
8 why the court imposes this sentence. The court does
9 find it to be a reasonable sentence that the court has
10 indicated, and for that reason the court imposes the
11 sentence of credit for time served.

12 The court does advise the defendant of his
13 right to appeal from the imposition of sentence. If
14 defendant wishes to appeal, the court would order that
15 his present counsel file the notice for him, and it is
16 his responsibility to keep the Ninth Circuit advised
17 at all times of his current address.

18 Are there remaining counts or charges to be
19 dismissed?

20 MR. BLACK: Yes, we do move at this time, Your
21 Honor, to dismiss Counts 2 and 3 of the indictment.
22 The defendant in this case pled to the conspiracy
23 count, Count One, so we would move to dismiss Counts 2
24 and 3.

25 THE COURT: And the court does so order.

1 Is there anything further?

2 MR. TORRES: No, Your Honor, thank you.

3 THE COURT: All right, good luck.

4 MR. BLACK: Thank you, Your Honor.

5 THE DEFENDANT: Thank you, Your Honor.

6 (Whereupon proceedings concluded at 5:01 p.m.)

7 * * *

8
9
10 CERTIFICATE OF REPORTER

11
12 CITY OF AGANA)
13) ss.
14 TERRITORY OF GUAM)

15 I, Wanda M. Miles, Official Court Reporter
16 of the District Court of Guam, do hereby certify the
17 foregoing pages 1-43, inclusive, to be a true and
18 correct transcript of the shorthand notes taken by me
19 of the within-entitled proceedings, at the date and
20 times therein set forth.

21 Dated this 12th day of August, 2005.

22
23 Wanda M. Miles
24
25

Wanda M. Miles
Official Court Reporter